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IN THE

Supreme Court of the United States

October Term, 1958.

No. 143

EMMA SPECTOR,

Petitioner,

vs.

IONE LOIS PETE, Admx., *et al.*,

Respondent.

Amended Motion for Leave to File a Brief Amicus Curiae in Petition for Rehearing of Petition for Writ of Certiorari by PAST TRIBAL CHIEF AND MEMBER AGUA CALIENTE (Palm Springs) BAND OF MISSION INDIANS.

SAMUEL MCKEEHAN DAGUE,
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Los Angeles 13, California,
Counsel for Applicant.

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The applicant, a formal Tribal Chief and Member of Agua Caliente (Palm Springs) Band of Mission Indians, asks to amend her motion to file a brief *amicus curiae* herein to show further reasons therefor. Her family has unsold allotments valued in excess of $500,000, available for sale under present Government procedure which the State Court herein attempts to invalidate; her family owns eleven head-rights to about one seventh of their Reservation. The Secretary of the Interior is trustee for allotments valued in excess of two million dollars and is being asked to file a brief herein if time permits.

This Court in *Arenas v. United States.*, 322 U.S. 412 authorized allotments in 1944 which were delayed. In 1948,

this applicant, then Tribal Chief, as designated by the 1939 Tribal Constitution, petitioned the President, Congress and Secretary of the Interior for allotments. The petition was presented by this counsel and the Secretary allotted lands valued at $7,000,000.00 under the provisions of the Mission Indian Act of 1891 (26 Stat. 712) to be held in trust. Since then the Secretary has removed restrictions and effected the sale of over one million dollars of trust patented lands in the Palm Springs Indian Reservation* under authority of the Allotment Sale Law (25 U. S. C. 405), Federal Regulations (25 C. F. R. 121-once 241), and Indian Bureau Rules and Instructions, which provide for the Indian's application, appraisals, offers to purchase approval, and when satisfied with the terms of sale the Secretary may remove the restrictions to become effective only and simultaneously with the execution of a deed by Indian applicant and issue an order specifically providing the terms under which the land may be sold and providing for the disposal of the proceeds.

The State Court has sustained a demurrer on the theory that any agreement by a Mission Indian was void *ab initio* under the restrictions and provisions of the General Allotment Act (24 Stat. 388; 25 U. S. C. 348, and 349 amendment) which did not apply to the trust patents or fee patents of Mission Indians. For fee patents to be insurable, it was necessary for this counsel to obtain remedial legislation for the applicants daughter Mrs.

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*Consists of 50 even numbered sections valued at $18,000,000.00 Adjoining odd numbered sections were granted Southern Pacific Railway for a construction subsidy, on 4 or 5 sections of which Palm Springs is crowded and for expansion requires Indian Land which has an active market, the 1958 sales exceeding $700,000. The land is central business property, adjoins the Mineral Springs, and is near hundreds of resort hotels, lodges, clubs, and winter homes of Hollywood and Los Angeles celebrities.

Gloria Welmas Gillette, which was made general and enacted by Congress as Public Law 653, 68 Stat. 791 to validate fee patents. This law was enacted August 24, 1954, prior to which time the law relied upon by the State Court, did not apply to the Indian land in suit.

Furthermore the State Court failed to take judicial notice of the terms of the United States recorded document in suit, the so-called Invalid Indian Contract. The document has been located (see Appendix hereto) and appears to be a lawful offer addressed to the Secretary of the Interior or Indian Bureau to purchase the Pete land; that the Indian Pete only made an application required by law.

It appears that the Secretary approved the purchase agreement and that it was lawfully carried out until the papers reached the local Indian Agent, the Indian Pete and the representative Miller. They seem to have executed deeds for all the tenants including the Plaintiff, but they took 3 feet off plaintiffs parcel for Miller and offered her a deed for 27 feet, for which she had over paid and was willing to accept. However Miller, with knowledge of Pete and Indian Agent, refused to deliver the 27 feet deed to Plaintiff unless she relinquished the 3 feet to Miller, who had a mistaken idea that his building was 3 feet in a street. In the confusion the deeds to the others were defectively prepared and their titles are not insurable. Millers 73 feet deeds describes land owned by this applicant in the South East corner of Lot 2. A deed to Lewis of 27 feet describes property belonging to this Applicant in S. E. Corner of Lot 2-4-4 SBBM. To settle a condemnation suit, the Government moved a building of the Plaintiff to the 30 foot parcel and gave her leases providing for payment of rents until December 1,

1959. She remains in occupancy and possession, either as a lessee or the equitable owner of the premises; no one else seems to have an insurable title thereto. Owing to the defective deeds, it may take several suits to quiet title, if this cause is not reversed and remanded for that purpose.

Only the decision on the demurrer is before the Court. It is believed that a full brief and argument would show that the demurrer was erroneously sustained (a) on authority of law not applicable to Mission Indian land; and (b) by disregarding that the secretary approved the transaction: he held the legal title, and had to approve the conveyance; the purchasers contracted with the Secretary Trustee of the Indian Allottee Pete.

It is believed that a more complete brief and argument can be prepared and filed on the points indicated, and that if the argument is accepted, it would be dispositive of this case.

Respectfully submitted,

SAMUEL MCKEEHAN DAGUE,

Counsel for the Applicant Lorene Welmas McGlamary.

OFFER

The undersigned hereby agree and offer to purchase from

Marcus Pete—P.S. 58

the following described real property in the City of Palm Springs State of California, to-wit:

A parcel of land described as Block 2, Section 14, T4S, R4E, SBBM
Containing 1.47 acres

upon the following terms and conditions:

1. The total consideration shall be the sum of $78,660.00 payable as follows:
   a. $20,000.00 upon delivery of Fee Patent title by seller to buyers or their agent.
   b. Balance payable in equal yearly installments within two years from date of delivery of Fee Patent title ($29,330 per year).
2. Interest 6% per annum on unpaid principal, payable with each yearly installment of principal,
3. Unpaid principal to be secured by standard form trust deed note.
4. All taxes, assessments and improvements to be paid for by buyers.
5. Buyers to take subject to any lis pendens and agree and promise to assume the payment of any and all liens and encumbrances on said property as of this date. Buyers and seller agree that 10% of the sale price of $78,660.00 will be withheld from the down payment of $20,000.00 and placed in escrow pending the outcome of the Clement Segundo vs. U. S. Government suit.
6. Buyers acknowledge and affirm that no representation or warranties as to title have been made by seller; that seller is an American Indian desirous of obtaining title to said land from the United States Government as will enable him to convey to buyers; that seller is unable to assure the buyers that title insurance can be obtained. Buyers acknowledge that sale is made subject to the following leases

Sandoval, Fred and Blanch	expires—July 31, 1958
Field, Stephen and marianne	expires—Sept. 30, 1956

7. Buyers are all lessees who have substantial improvements on this land and who hold valid government leases which automatically terminate upon delivery of Fee Patent. It is agreed and understood by buyers and seller that all advance lease rents are to be withheld from the down payment and refunded to each lessee.
8. Each prospective buyer is willing and able to deposit $1,000.00 in escrow upon approval of this offer by the Area Director.
9. This group of lessees are representing themselves without Agent or Broker and will personally handle all escrow details.

Dated at Palm Springs this
29th day of April 1954
Marcus Pete
Witness: Ned Mitchell

Charles W. Miller 226 N. Indian Ave.
Ethel C. Miller 226 N. Indian Ave.
Oscar Madinach 220 N. Indian Ave.
Selma Mandinach 220 N. Indian Ave.
Emma Specter 208 N. Indian Ave.
Dr. W. H. Clarkson 240 N. Indian Ave
by Lillian Bell Clarkson
Ronald H. Dunlap 4185 Calle San Raphaeal
Dora Dunlap 4184 Calle San Raphaeal